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U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:) Chapter 13
)
) Case No. 4-05-08553-EWH
)
WILLIAM ANTHONY ABBOTT,) **ORDER SETTING ASIDE THE**
) **COURT'S ORAL ORDER OF**
) **MARCH 13, 2006 AND SETTING**
Debtor.) **FINAL HEARING ON MOTION FOR**
) **RELIEF FROM STAY**

On March 13, 2006, the court heard the motion of Arizona State Savings & Credit Union ("ASCU") seeking confirmation that the automatic stay of 11 U.S.C. § 362(a) did not apply to it because:

1. no stay was in effect under 11 U.S.C. § 362(c)(4)(A)(i); or
2. the stay expired as to ASCU 30 days after the filing of the Debtor's most recent bankruptcy petition pursuant to 11 U.S.C. § 362(c)(3)(A).

In the alternative, ASCU sought relief from the automatic stay for cause under § 362(d)(1). At the hearing, I ruled that § 362(c)(4)(A)(i) did not apply to the Debtor because at the time he filed his most recent Chapter 13 petition, only one of his two previous chapter 13 cases had been dismissed within the previous calendar year. In order for § 362(c)(4)(A)(i) to apply, the Debtor would have to have had two previous cases dismissed within the previous calendar year and one case would have to be pending at the

1 time he filed the instant case. The Debtor, instead, falls within the provisions of
2 § 362(c)(3)(A) which “applies to individuals who have had three cases pending in one
3 calendar year: one case that has been dismissed, one case that is still pending when the
4 petition at issue was filed, and the new case that is before the court for determination.” In
5 re Paschal, 337 B.R. 274, 277 (Bankr. E.D. N.C. 2006).¹ That is the Debtor’s situation in
6 this case.
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9 The Debtor sought an extension of the stay under § 362(c)(3)(B) within 30 days of
10 filing this case, but only gave notice of his request to the Chapter 13 Trustee and to the first
11 lien holder on his residence. ASCU holds the second lien on the residence. ASCU did not
12 receive notice of the Debtor’s request for an extension of the stay or of the order entered
13 on January 11, 2006 conditionally extending the stay until February 19, 2006.
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15 On February 7, 2006, a status hearing was held on the Debtor’s initial request for an
16 extension of the stay. ASCU had no notice of the February 7th hearing. After the hearing, an
17 additional order was entered (“February 9th Order”) which contained the following
18 provision:
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20 In the event that the Debtor fails to timely make a payment required under the
21 Plan to the Trustee, Midland [first lien holder] or Arizona State Savings, and
22 in such event, a motion for stay relief is filed by an affected party, then the
23 automatic stay will be lifted at any preliminary hearing arising from such
24

25
26 ¹ Because both §§ 362(c)(3) and (c)(4) refer to a debtor who is an individual in a case, the
27 sections only apply to cases where the debtor has a case open when a new petition is filed. Paschal at
28 277.

1 motion, unless the Debtor shall have cured such failure by the time the court
2 conducts such a preliminary hearing.²

3 Because ASCU did not receive notice of the Debtor's request for extension of the
4 stay within 30 days of the filing of his most recent petition, I ruled at the March 13, 2006
5 hearing that the stay of § 362(a) expired as to ASCU 30 days after the petition date which
6 was no later than January 22, 2006. Failure to notify the parties who will be affected by an
7 extension of the stay is fatal. As noted by the court in Collins, 334 B.R. 655, 659 (Bankr.
8 D. Minn. 2005):
9

10
11 [T]he notice requisite for a motion under § 362(c)(3)(B) to extend the stay of
12 § 362(c)(3)(A) is, at the very least, service on those individual creditors that
the debtor would have subjected to the extended stay. . . .

13 See also In re Charles, 332 B.R. 538, 541 (Bankr. S.D. Tex. 2005).

14 Because I determined that the extension of the stay was inapplicable to ASCU, I did
15 not address whether ASCU was entitled to stay relief under the terms of the February 9th
16 Order and § 362(d)(1). At the hearing, the Debtor's counsel made an offer of proof that the
17 Debtor had cured the payments that were due to ASCU under the February 9th Order. At the
18 conclusion of the hearing, I directed counsel for ASCU to submit an order confirming that
19 the stay was not in effect as to ASCU.
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22 However, since the hearing, I have determined that my ruling failed to consider
23 anything more than whether the Debtor fell within the category of debtors described in
24 § 362(c)(3). More is required. A determination must also be made about the effect of the
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27 ² ASCU did not receive notice of the entry of the February 9th Order.
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1 statute on the cases which fall within its ambit. That task is, unfortunately, a daunting one.

2 As noted in the Paschal decision, § 362(c)(3) is a particularly difficult provision of the
3 Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) to interpret.
4 Paschal, 337 B.R. at 277. In Paschal, Judge Small carefully parsed the statute focusing, in
5 particular, on § 362(c)(3)(A)’s language which terminates the stay with respect to any
6 “action taken with respect to a debt or property securing such debt.” Judge Small
7 concluded that the use of the term “action” in § 362(c)(3)(A)
8

9 “means a formal action, such as a judicial, administrative, governmental,
10 quasi-judicial, or other essential formal activity or proceeding. Furthermore,
11 the action with respect to which the stay terminates is an ‘action taken’ which
12 means an action in the past, prior to the filing of the Debtor’s bankruptcy
13 petition.” Id. at 280.

14 In this case, no foreclosure sale by ASCU or other “formal” collection action was
15 pending at the time that Debtor filed his petition. Therefore, under the analysis of Paschal,
16 § 362(c)(3)(A)’s limitation of the stay of § 362(a) to the 30-day period following the filing
17 of the Debtor’s instant petition does not apply to ASCU.
18

19 A literal reading of § 362(c)(3) also results in the conclusion that even if the stay
20 terminated under § 362(c)(3)(A), it only terminated as to property of the Debtor.
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22 Section 362(c)(3)(A) provides as follows:

23 [T]he stay under subsection (a) with respect to any action taken with respect
24 to a debt or property, securing such debt or with respect to any lease, shall
25 terminate with respect to the debtor on the 30th day after the filing of the
26 later case.” (emphasis added).
27
28

1 At least one court has applied a plain meaning analysis to that language to hold that
2 the 30-day time limit of § 362(c)(3)(A) does not apply to property of the estate. See In re
3 Johnson, 335 B.R. 805, 806 (Bankr. W.D. Tenn. 2006). Under Johnson, even if the stay is
4 terminated as to the Debtor's interest in property under § 362 (c)(3)(A), it continues to
5 protect property of the estate, as long as it remains property of the estate. In this case,
6 because no plan has been confirmed, all of the Debtor's property, including his residence,
7 remains property of the estate under §§ 541 and 1306. Accordingly, under the holding in
8 Johnson, the stay remains in effect as to the estate's property, including Debtor's
9 residence, regardless of whether ASCU received notice of the Debtor's motion to extend
10 the stay under § 362(c)(3)(B).

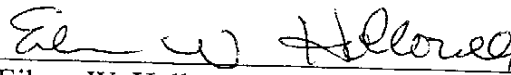
11 Based on the analysis in Paschal and Johnson, the court must now reconsider its oral
12 ruling of March 13, 2006. However, given the unfamiliarity of counsel (and the court) with
13 the new provisions of BAPCPA and the particular difficulty presented by the language of
14 § 362(c)(3)(A), the court must provide counsel an opportunity to address the cases cited in
15 this Order before it enters a formal order on ASCU's motion.

16 Accordingly, counsel may submit, **no later than Friday, April 7, 2006**,
17 supplemental briefs on: (1) the applicability of § 362(c)(3)(A) to property of the estate
18 and; (2) whether the scope of § 362(c)(3)(A) is limited to formal actions taken prior to the
19 filing of the Debtor's latest petition.

20 Because ASCU requested alternative relief from the stay under § 362(d) and
21 because the Debtor apparently complied with the court's February 9th Order by curing past-

1 due payments to ASCU prior to the March 13, 2006 hearing, the court hereby sets a final
2 hearing on ASCU's Motion for Relief From Stay under § 362(d)(1) for **Friday, April 14,**
3 **2006 at 9:45 a.m..** In the interim, the stay remains in effect under §§ 362(e)(2) and 105.
4

5 Dated this 15th day of March, 2006.
6

7 
8 Eileen W. Hollowell
9 U.S. Bankruptcy Judge

10 Copy of the foregoing mailed
11 this 15th day of March, 2006, to:

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